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CHP Officer Keene, CHP Officer Tolen, and
9 CHP Sergeant Vaughan

10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12
13 ROBERT S. MARKMAN,
14 Plaintiff,
15 v.
16 RACHEL LASOTA, et al.,
17 Defendants.

Case No. CV 15-03335 DDP (KLS)

**DEFENDANT SERGEANT
WAUGHAN'S ANSWER TO
PLAINTIFF'S SECOND AMENDED
COMPLAINT**

DEMAND FOR JURY TRIAL

18 Judge: Dean D. Pregerson
19 Courtroom: 3

20 Trial Date Not set yet
21 Action Filed: May 4, 2015

1 Defendant Sergeant Vaughan hereby answers, admits, denies, and alleges in
2 response to the Second Amended Complaint (Complaint) of Plaintiff Robert S.
3 Markman (Plaintiff), and asserts his affirmative defenses against Plaintiff as
4 follows:

5 I.

6 JURISDICTION AND VENUE

7 1. This allegation is not a factual allegation requiring a response under
8 Federal Rule of Civil Procedure 8. Nevertheless, Vaughan denies that he violated
9 Plaintiff's constitutional rights or deprived him of his constitutional rights under
10 Title 42, United States Code section 1983 (Section 1983).

11 2. Vaughan admits the allegations in Paragraph 2 of the Complaint.

12 II.

13 GOVERNMENT CLAIMS ACT

14 3. Vaughan admits that Plaintiff filed a Government Claim Form dated
15 October 23, 2014, and it was designated as Claim No. G621129 by the Government
16 Claims Program. Vaughan also admits that Plaintiff's Government Claim lists him
17 as a person against whom the claim was filed, and that Plaintiff's Government
18 Claim was rejected on January 15, 2015. Except as expressly admitted, Vaughan
19 denies each and every remaining allegation in Paragraph 3 of the Complaint.

20 III.

21 PARTIES

22 4. Vaughan admits, upon information and belief, the allegations in
23 Paragraph 4 of the Complaint.

24 5. Vaughan admits that Plaintiff has sued Rachel LaSota in her
25 individual capacity. Vaughan also admits, upon information and belief, that
26 LaSota was an employee of the State of California at all times mentioned in
27 Plaintiff's Complaint, and, in that capacity, she acted under the color of state law.
28 Vaughan is without sufficient knowledge or information to enable him to answer as

1 to the truth of the remainder of the allegations contained in Paragraph 5 of the
2 Complaint, and on that ground denies each and every allegation in that paragraph of
3 the Complaint not expressly admitted.

4 6. Waughan admits that Plaintiff has sued Jeremy Tolen in his individual
5 capacity. Waughan also admits that Officer Tolen was an officer of the California
6 Highway Patrol at all times mentioned in Plaintiff's Complaint, and, in that
7 capacity, he acted under the color of state law. Waughan is without sufficient
8 knowledge or information to enable him to answer as to the truth of the remainder
9 of the allegations contained in Paragraph 6 of the Complaint, and on that ground
10 denies each and every allegation in that paragraph of the Complaint not expressly
11 admitted.

12 7. Waughan admits that Plaintiff has sued D. Keene in his individual
13 capacity, and that Officer Keene is incorrectly named in the caption of Plaintiff's
14 Complaint as Officer Keane. Waughan also admits that Officer Keene was an
15 officer of the California Highway Patrol at all times mentioned in Plaintiff's
16 Complaint, and, in that capacity, he acted under the color of state law. Waughan is
17 without sufficient knowledge or information to enable him to answer as to the truth
18 of the remainder of the allegations contained in Paragraph 7 of the Complaint, and
19 on that ground denies each and every allegation in that paragraph of the Complaint
20 not expressly admitted.

21 8. Sergeant Waughan admits that at all times mentioned in Plaintiff's
22 Complaint he was an officer of the California Highway Patrol, and, in that capacity,
23 he acted under the color of state law. He further admits that Plaintiff's Complaint
24 states that he is being sued in his individual capacity. Except as expressly admitted,
25 Waughan denies each and every remaining allegation in Paragraph 8 of the
26 Complaint.

27 9. Waughan denies the allegations in Paragraph 9 of the Complaint.

28 IV.
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INTRODUCTION

10. This allegation is not a factual allegation requiring a response under Federal Rule of Civil Procedure 8. Nevertheless, Waughan denies the allegations in Paragraph 10 of the Complaint and denies that Plaintiff is entitled to any compensation.

V.

FACTUAL ALLEGATIONS

11. Waughan admits, upon information and belief, that Plaintiff was a medical doctor licensed to practice medicine in the State of California at the time that he filed his Complaint. Waughan is without sufficient knowledge or information to enable him to answer as to the truth of the remainder of the allegations contained in Paragraph 11 of the Complaint, and on that ground denies each and every allegation in that paragraph of the Complaint not expressly admitted.

12. Waughan is without sufficient knowledge or information to enable him to answer as to the truth of the allegations contained in Paragraph 12 of the Complaint, and on that ground denies each and every allegation in that paragraph of the Complaint not expressly admitted.

13. Waughan is without sufficient knowledge or information to enable him to answer as to the truth of the allegations contained in Paragraph 13 of the Complaint, and on that ground denies each and every allegation in that paragraph of the Complaint not expressly admitted.

14. Waughan is without sufficient knowledge or information to enable him to answer as to the truth of the allegations contained in Paragraph 14 of the Complaint, and on that ground denies each and every allegation in that paragraph of the Complaint not expressly admitted.

15. Waughan is without sufficient knowledge or information to enable him to answer as to the truth of the allegations contained in Paragraph 15 of the

1 Complaint, and on that ground denies each and every allegation in that paragraph of
2 the Complaint not expressly admitted.

3 16. Waughan is without sufficient knowledge or information to enable him
4 to answer as to the truth of the allegations contained in Paragraph 16 of the
5 Complaint, and on that ground denies each and every allegation in that paragraph of
6 the Complaint not expressly admitted.

7 17. Waughan is without sufficient knowledge or information to enable him
8 to answer as to the truth of the allegations contained in Paragraph 17 of the
9 Complaint, and on that ground denies each and every allegation in that paragraph of
10 the Complaint not expressly admitted.

11 18. Waughan is without sufficient knowledge or information to enable him
12 to answer as to the truth of the allegations contained in Paragraph 18 of the
13 Complaint, and on that ground denies each and every allegation in that paragraph of
14 the Complaint not expressly admitted.

15 19. Waughan is without sufficient knowledge or information to enable him
16 to answer as to the truth of the allegations contained in Paragraph 19 of the
17 Complaint, and on that ground denies each and every allegation in that paragraph of
18 the Complaint not expressly admitted.

19 20. to 24. There are no paragraphs 20 to 24 in Plaintiff's Complaint.

20 25. Waughan is without sufficient knowledge or information to enable him
21 to answer as to the truth of the allegations contained in Paragraph 25 of the
22 Complaint, and on that ground denies each and every allegation in that paragraph of
23 the Complaint not expressly admitted.

24 26. Waughan is without sufficient knowledge or information to enable him
25 to answer as to the truth of the allegations contained in Paragraph 26 of the
26 Complaint, and on that ground denies each and every allegation in that paragraph of
27 the Complaint not expressly admitted.

28 27. Waughan is without sufficient knowledge or information to enable him

1 to answer as to the truth of the allegations contained in Paragraph 27 of the
2 Complaint, and on that ground denies each and every allegation in that paragraph of
3 the Complaint not expressly admitted.

4 28. Waughan is without sufficient knowledge or information to enable him
5 to answer as to the truth of the allegations contained in Paragraph 28 of the
6 Complaint, and on that ground denies each and every allegation in that paragraph of
7 the Complaint not expressly admitted.

8 29. Waughan is without sufficient knowledge or information to enable him
9 to answer as to the truth of the allegations contained in Paragraph 29 of the
10 Complaint that relate to events that occurred prior to Waughan's initial encounter
11 with Plaintiff on May 29, 2014. Waughan also admits: (1) Plaintiff was wearing his
12 boxer briefs when Waughan initially encountered him, (2) he detained Plaintiff in
13 the parking lot pending the arrival of other law enforcement officers, including
14 Officers Keene and Tolen, (3) Plaintiff sat down on the curb for part of the time in
15 the parking lot, (4) that Plaintiff tried to explain why he thought his attire was
16 appropriate, and (5) Plaintiff told Waughan about his shoulder injury and the bruise
17 on his shoulder. Except as to those allegations expressly admitted or those events
18 that occurred prior to Waughan's initial encounter with Plaintiff on May 29, 2014,
19 Waughan denies each and every remaining allegation in Paragraph 29 of the
20 Complaint.

21 30. Waughan admits that while he was in the parking lot with Plaintiff, he
22 was joined by members of the Medical Board, including LaSota. Waughan admits
23 that they were also joined by Officers Keene and Tolen and that they spoke with
24 LaSota. Waughan further admits that Plaintiff was handcuffed by Officers Keene
25 and Tolen and placed in a patrol vehicle. Waughan admits, upon information and
26 belief, that LaSota was a current Medical Board probation supervisor, but is without
27 sufficient knowledge or information to enable him to answer as to the truth of the
28 allegation that LaSota was a former or current peace officer, and on that ground

1 denies this allegation. Vaughan also admits that two people walked over to
2 Plaintiff's car and opened a door, but denies that they searched it. Except as
3 expressly admitted, Vaughan denies the allegations in Paragraph 30 of the
4 Complaint.

5 31. Vaughan admits that Officer Tolen spoke with LaSota and that
6 Officers Keene and Tolen took Plaintiff to College Hospital of Cerritos. Vaughan
7 is without sufficient knowledge or information to enable him to answer as to the
8 truth of the remainder of the allegations contained in Paragraph 31 of the
9 Complaint, and on that ground denies each and every allegation in that paragraph of
10 the Complaint not expressly admitted.

11 32. Vaughan is without sufficient knowledge or information to enable him
12 to answer as to the truth of the allegations contained in Paragraph 32 of the
13 Complaint, and on that ground denies each and every allegation in that paragraph of
14 the Complaint not expressly admitted.

15 33. Vaughan admits that Officers Keene and Tolen handcuffed Plaintiff
16 behind his back as a method to accommodate Plaintiff's shoulder injury. Vaughan
17 also admits that Plaintiff was not cooperating with the placement of his arms behind
18 his back and had to be told by the officers that he might have to be tased. Except as
19 expressly admitted, Vaughan denies each and every remaining allegation in
20 Paragraph 33 of the Complaint.

21 34. Vaughan is without sufficient knowledge or information to enable him
22 to answer as to the truth of the allegations contained in Paragraph 34 of the
23 Complaint, and on that ground denies each and every allegation in that paragraph of
24 the Complaint not expressly admitted.

25 35. Vaughan is without sufficient knowledge or information to enable him
26 to answer as to the truth of the allegations contained in Paragraph 35 of the
27 Complaint, and on that ground denies each and every allegation in that paragraph of
28 the Complaint not expressly admitted.

1 36. Waughan is without sufficient knowledge or information to enable him
2 to answer as to the truth of the allegations contained in Paragraph 36 of the
3 Complaint, and on that ground denies each and every allegation in that paragraph of
4 the Complaint not expressly admitted.

5 37. Waughan admits that he detained Plaintiff. Waughan affirmatively
6 asserts that he had probable cause or reasonable suspicion to detained Plaintiff who
7 had come to the Medical Board of California's office wearing only his underwear.
8 Except as expressly admitted, Waughan denies the allegations in Paragraph 37 of
9 the Complaint.

10 38. Waughan is without sufficient knowledge or information to enable him
11 to answer as to the truth of the allegations contained in Paragraph 38 of the
12 Complaint, and on that ground denies each and every allegation in that paragraph of
13 the Complaint not expressly admitted.

14 39. Waughan admits that he contacted Officers Tolen and Keene at
15 approximately 10:55 a.m. on May 29, 2014, regarding a doctor who had showed up
16 at the Medical Board of California's office in Cerritos wearing only his underwear.
17 Waughan also admits that: (1) Plaintiff was contacted by Officer Tolen while
18 Plaintiff was at the curb edge in the parking lot, (2) Officer Tolen gave Plaintiff a
19 lawful order to stand up for handcuffing, and (3) Plaintiff was told by Waughan
20 and/or Tolen that they were there to help him, not hurt him, or similar words to the
21 same effect. Waughan further admits that a Narrative/Supplemental signed by
22 Officer D. Keene was prepared regarding the events of May 29, 2014, relating to
23 Plaintiff. However, Waughan affirmatively asserts that although subparagraphs a.
24 to h. are substantially similar to the contents of the Narrative/Supplemental, they do
25 not fully and completely quote those contents nor do these subparagraphs contain
26 the full contents of the Narrative/Supplemental. Waughan is without sufficient
27 knowledge or information to enable him to answer as to the truth of the remainder
28 of the allegations contained in Paragraph 39 of the Complaint, and on that ground

1 denies each and every allegation in that paragraph of the Complaint not expressly
2 admitted.

3 40. Waughan admits that he contacted Officers Tolen and Keene at
4 approximately 10:55 a.m. on May 29, 2014, regarding a doctor who had showed up
5 at the Medical Board of California's office in Cerritos wearing only his underwear.
6 Waughan also admits that: (1) Plaintiff's photo is posted in the Medical Board's
7 office to inform Medical Board employees not to permit Plaintiff to enter, (2)
8 Plaintiff was inappropriately attired, (3) Plaintiff was escorted out of building
9 where the Medical Board's office in Cerritos was located by building security, (4)
10 Officer Tolen gave Plaintiff a lawful order to stand up for handcuffing, (5) as
11 Officers Tolen and Keene began to detain Plaintiff, he physically resisted, and
12 moved his arms and hands in front of torso and tensed up, and (6) Plaintiff was told
13 by Waughan and/or Tolen that they were there to help him, not hurt him, or similar
14 words to the same effect. Waughan further admits that a Narrative/Supplemental
15 signed by Officer Tolen was prepared as part of the Arrest-Investigation Report
16 regarding the events of May 29, 2014, relating to Plaintiff. However, Waughan
17 affirmatively asserts that although subparagraphs a. to m. are substantially similar
18 to the contents of the Narrative/Supplemental, they do not fully and completely
19 quote those contents nor do these subparagraphs contain the full contents of the
20 Narrative/Supplemental. Waughan is without sufficient knowledge or information
21 to enable him to answer as to the truth of the remainder of the allegations contained
22 in Paragraph 40 of the Complaint, and on that ground denies each and every
23 allegation in that paragraph of the Complaint not expressly admitted.

24 41. Waughan is without sufficient knowledge or information to enable him
25 to answer as to whether Officer Tolen ever gave Plaintiff the information that
26 Plaintiff contends that he was legally required to give per Section 5150(g)(1).
27 Waughan denies the remainder of the allegations in Paragraph 41 of the Complaint.

28 42. Waughan is without sufficient knowledge or information to enable him

1 to answer as to the truth of the allegations contained in Paragraph 42 of the
2 Complaint, and on that ground denies each and every allegation in that paragraph of
3 the Complaint not expressly admitted.

4 43. Waughan is without sufficient knowledge or information to enable him
5 to answer as to the truth of the allegations contained in Paragraph 43 of the
6 Complaint, and on that ground denies each and every allegation in that paragraph of
7 the Complaint not expressly admitted.

8 44. Waughan admits that he was told some words to the effect that
9 Plaintiff said he was coming to the Medical Board's office with only what God
10 gave him. Waughan is without sufficient knowledge or information to enable him
11 to answer as to the truth of Plaintiff's allegation that LaSota fabricated this
12 statement alleged in Paragraph 44 of the Complaint, and on that ground denies this
13 allegation in Paragraph 44 of the Complaint. Except as expressly admitted,
14 Waughan denies the remainder of the allegations in Paragraph 44 of the Complaint.

15 45. Waughan admits that he testified under oath in March 2016 during an
16 administrative hearing being prosecuted by the Medical Board of California against
17 Plaintiff in Los Angeles, California. Upon information and belief, Waughan also
18 admits that Officer Tolen, Officer Keene, and LaSota testified during the same
19 administrative hearing in March 2016. Except as expressly admitted, Waughan
20 denies each and every remaining allegation in Paragraph 45 of the Complaint.

21 FIRST CLAIM

22 46. Waughan incorporates by reference his answers to Paragraphs 1
23 through 45 of Plaintiff's Complaint. Except as expressly admitted, Waughan
24 denies the allegations in Paragraph 46 of the Complaint.

25 47. Waughan admits that at all times mentioned in Plaintiff's Complaint
26 he was an employee of the state of California, and, in that capacity, he acted under
27 the color of state law. Waughan also admits that Officer Tolen and Officer Keene
28 were employees of the State of California at all times mentioned in Plaintiff's

1 Complaint, and, in that capacity, they acted under the color of state law. Upon
 2 information and belief, Waughan admits that at all times mentioned in Plaintiff's
 3 Complaint, LaSota was an employee of the State of California, and, in that capacity,
 4 she acted under the color of state law. Except as expressly admitted, Waughan
 5 denies the remainder of the allegations in Paragraph 47 of the Complaint.

6 48. Waughan denies the allegations in Paragraph 48 of the Complaint.

7 49. Waughan denies the allegations in Paragraph 49 of the Complaint.

8 SECOND CLAIM

9 50. Waughan incorporates by reference his answers to Paragraphs 1
 10 through 49 of Plaintiff's Complaint. Except as expressly admitted, Waughan
 11 denies the allegations in Paragraph 50 of the Complaint.

12 51. Waughan denies the allegations in Paragraph 51 of the Complaint.

13 52. Waughan denies the allegations in Paragraph 52 of the Complaint.

14 THIRD CLAIM

15 53. Waughan incorporates by reference his answers to Paragraphs 1
 16 through 52 of Plaintiff's Complaint. Except as expressly admitted, Waughan
 17 denies the allegations in Paragraph 53 of the Complaint.

18 54. Waughan denies the allegations in Paragraph 54 of the Complaint.

19 55. Waughan denies the allegations in Paragraph 55 of the Complaint.

20 56. Waughan denies the allegations in Paragraph 56 of the Complaint.

21 FOURTH CLAIM

22 57. to 61. Waughan asserts that this former cause of action was validly
 23 dismissed against him and, to the extent that Plaintiff voluntarily dismissed it
 24 against him, Plaintiff has waived any right to appeal the dismissal or deletion of this
 25 cause of action from Plaintiff's Complaint.

26 FIFTH CLAIM

27 62. Waughan incorporates by reference his answers to Paragraphs 1
 28 through 61 of Plaintiff's Complaint. Except as expressly admitted, Waughan

1 denies the allegations in Paragraph 62 of the Complaint.

2 63. Waughan admits that at all times mentioned in Plaintiff's Complaint
3 he was an employee of the state of California, and, in that capacity, he acted under
4 the color of state law. Waughan also admits that Officer Tolen and Officer Keene
5 were employees of the State of California at all times mentioned in Plaintiff's
6 Complaint, and, in that capacity, they acted under the color of state law. Upon
7 information and belief, Waughan admits that at all times mentioned in Plaintiff's
8 Complaint, LaSota was an employee of the State of California, and, in that capacity,
9 she acted under the color of state law. Except as expressly admitted, Waughan
10 denies the remainder of the allegations in Paragraph 63 of the Complaint.

11 64. Waughan denies the allegations in Paragraph 64 of the Complaint.

12 SIXTH CLAIM

13 65. Waughan incorporates by reference his answers to Paragraphs 1
14 through 64 of Plaintiff's Complaint. Except as expressly admitted, Waughan
15 denies the allegations in Paragraph 65 of the Complaint.

16 66. Waughan admits that at all times mentioned in Plaintiff's Complaint
17 he was an employee of the state of California, and, in that capacity, he acted under
18 the color of state law. Waughan also admits that Officer Tolen and Officer Keene
19 were employees of the State of California at all times mentioned in Plaintiff's
20 Complaint, and, in that capacity, they acted under the color of state law. Upon
21 information and belief, Waughan admits that at all times mentioned in Plaintiff's
22 Complaint, LaSota was an employee of the State of California, and, in that capacity,
23 she acted under the color of state law. Except as expressly admitted, Waughan
24 denies the remainder of the allegations in Paragraph 66 of the Complaint.

25 67. Waughan denies the allegations in Paragraph 67 of the Complaint.

26 SEVENTH CLAIM

27 68. Waughan incorporates by reference his answers to Paragraphs 1
28 through 67 of Plaintiff's Complaint. Except as expressly admitted, Waughan

1 denies the allegations in Paragraph 68 of the Complaint.

2 69. Waughan denies the allegations in Paragraph 69 of the Complaint.

3 70. Waughan admits that at all times mentioned in Plaintiff's Complaint
4 he was an employee of the state of California, and, in that capacity, he acted under
5 the color of state law. Waughan also admits that Officer Tolen and Officer Keene
6 were employees of the State of California at all times mentioned in Plaintiff's
7 Complaint, and, in that capacity, they acted under the color of state law. Upon
8 information and belief, Waughan admits that at all times mentioned in Plaintiff's
9 Complaint, LaSota was an employee of the State of California, and, in that capacity,
10 she acted under the color of state law. Except as expressly admitted, Waughan
11 denies the remainder of the allegations in Paragraph 70 of the Complaint.

12 71. Waughan denies the allegations in Paragraph 71 of the Complaint.

13 EIGHTH CLAIM

14 72. Waughan incorporates by reference his answers to Paragraphs 1
15 through 71 of Plaintiff's Complaint. Except as expressly admitted, Waughan
16 denies the allegations in Paragraph 72 of the Complaint.

17 73. Waughan admits that at all times mentioned in Plaintiff's Complaint
18 he was an employee of the state of California, and, in that capacity, he acted under
19 the color of state law. Waughan also admits that Officer Tolen and Officer Keene
20 were employees of the State of California at all times mentioned in Plaintiff's
21 Complaint, and, in that capacity, they acted under the color of state law. Upon
22 information and belief, Waughan admits that at all times mentioned in Plaintiff's
23 Complaint, LaSota was an employee of the State of California, and, in that capacity,
24 she acted under the color of state law. Except as expressly admitted, Waughan
25 denies the remainder of the allegations in Paragraph 73 of the Complaint.

26 74. Waughan denies the allegations in Paragraph 74 of the Complaint.

27 CONCLUSION

28 75. Waughan denies the allegations in Paragraph 75 of the Complaint.

PRAYER

1. Waughan denies that Plaintiff is entitled to the relief he requests in Paragraph 1.

2. Waughan denies that Plaintiff is entitled to the relief he requests in Paragraph 2.

3. Waughan denies that Plaintiff is entitled to the relief he requests in Paragraph 3.

4. Waughan denies that Plaintiff is entitled to the relief he requests in Paragraph 4.

5. Waughan denies that Plaintiff is entitled to the relief he requests in Paragraph 5.

6. Waughan denies that Plaintiff is entitled to the relief he requests in Paragraph 6.

AFFIRMATIVE DEFENSES

AS SEPARATE AND AFFIRMATIVE DEFENSES, Sergeant Waughan alleges as follows:

AFFIRMATIVE DEFENSE NO. 1

(Failure to State Sufficient Facts to State a Cause of Action)

The Complaint and each cause of action therein fail to state facts sufficient to constitute a cause of action upon which relief may be granted against Waughan.

AFFIRMATIVE DEFENSE NO. 2

(Qualified Immunity)

To the extent Waughan is charged with exercising the enforcement and regulatory power of the state, under the color of law, he is entitled to qualified immunity from any liability. Waughan acted at all times herein relevant, with good

1 faith or due care, within the scope of discretion, and pursuant to laws, regulations,
2 rules, and practices reasonably believed to be in accordance with the Constitution
3 and laws of the United States. In addition, or alternately, at all times relevant,
4 Waughan acted in good faith and entertained an honest, reasonable belief that his
5 actions were in accord with clearly established law, statutory or constitutional
6 rights, including California law, of which a responsible person would have known.

7 AFFIRMATIVE DEFENSE NO. 3

8 (Comparative Fault)

9 Any and all alleged happenings and events, damages and injuries, if there
10 were any, were proximately caused and contributed to by the acts or omissions of
11 Plaintiff or others, each and all of whom failed to exercise ordinary care in their
12 own behalf at all times and places alleged in the Complaint. Should Plaintiff herein
13 recover damages, the amount thereof should be abated, apportioned and reduced to
14 the extent that the fault or negligence of any other person or entity caused or
15 contributed to damages, if any there were.

16 AFFIRMATIVE DEFENSE NO. 4

17 (Estoppel)

18 The conduct of Plaintiff estops him from asserting any or some of the claims
19 for relief alleged in his Complaint against Waughan, respecting the matters that are
20 the subject of his Complaint, by virtue of his own conduct, representations,
21 knowledge, and omissions, or by the conduct, representations, knowledge, and
22 omissions of others whose conduct is chargeable to Plaintiff.

23 AFFIRMATIVE DEFENSE NO. 5

24 (Probable or Reasonable Cause)

25 The detention or arrest alleged in Plaintiff's Complaint was regular and
26 lawful and made in good faith by a peace officer or peace officers acting within the
27 course and scope of authority and with probable or reasonable cause to believe at
28 the time that such action was lawful.

AFFIRMATIVE DEFENSE NO. 6

(Proximate Causation)

Waughan was not the actual or proximate cause of any alleged injury or damages to Plaintiff. To the extent that Plaintiff suffered any injury or damages, it was the result of the negligent or deliberate acts of Plaintiff or others.

AFFIRMATIVE DEFENSE NO. 7

(Failure to Allege a Conspiracy)

Plaintiff has failed to allege facts sufficient to demonstrate a conspiracy by the defendants to deprive him of his civil rights. Moreover, Plaintiff has failed to allege facts showing that more than one party, as that term is used in the law of conspiracy, conspired for each of the cause of action alleged in Plaintiff's Complaint.

AFFIRMATIVE DEFENSE NO. 8

(Lack of Duty)

Waughan did not owe any duty of care to Plaintiff, and neither stood or stands in such a special relationship to Plaintiff so as to give rise to any duty running to Plaintiff.

AFFIRMATIVE DEFENSE NO. 9

(No Imputed or Respondeat Superior Liability)

There is no imputed liability between public officers and/or employees in actions under the Federal Civil Rights Act, including no imputed liability for any other public employee's allegedly unconstitutional acts or omissions. Waughan is not liable under federal or state law for any injury caused by any unconstitutional or tortious acts or omissions of any subordinate or other public employee.

AFFIRMATIVE DEFENSE NO. 10

(Testimonial Absolute Immunity)

Waughan is absolutely immune for any liability under the Federal Civil Rights Act arising from his testimony in any administrative or judicial proceeding,

1 regardless of whether the testimony was true, false, or perjured, based on *Briscoe v.*
 2 *LaHue*, 460 U.S. 325, 326, 341-46 (1983), and its progeny.

3 AFFIRMATIVE DEFENSE NO. 11

4 (Claims Variance)

5 If and to the extent that the allegations of Plaintiff's Complaint attempt to
 6 enlarge upon the facts and contentions set forth in his Victim Compensation and
 7 Government Claims Board claim, Plaintiff's Complaint fails to state a cause of
 8 action and is barred by California Government Code sections 905.2, 911.2, 945.4,
 9 or 950.2.

10 AFFIRMATIVE DEFENSE NO. 12

11 (Failure to Mitigate)

12 If Plaintiff has suffered any damages as a result of the facts alleged in his
 13 Complaint and in this action, which Waughan denies, Plaintiff is not entitled to
 14 recover some or all of his alleged damages, due to his failure to take reasonable,
 15 necessary, appropriate and/or feasible steps to mitigate or minimize his alleged
 16 injury or damages.

17 AFFIRMATIVE DEFENSE NO. 13

18 (Failure to State Claim for Punitive Damages)

19 The Complaint and each cause of action therein fail to allege facts sufficient
 20 to state a claim for punitive or exemplary damages. Waughan did not act with
 21 malicious intent, fraud, or reckless disregard to deprive Plaintiff of any
 22 constitutional right or to cause any other injury to Plaintiff, and, therefore,
 23 Waughan is not liable for punitive damages.

24 AFFIRMATIVE DEFENSE NO. 14

25 (Constitutional Defenses to Punitive Damages, As Applied)

26 Any award for punitive damages herein would result in a deprivation of
 27 rights under the Constitution of the United States in that:

28 A. The statutes and laws purporting to prescribe criteria for an award for

1 punitive damages are vague in that they are not sufficiently specific to know what
2 conduct will subject one to such penalty;

3 B. Any award of punitive damages herein would violate the due process
4 clauses of the Constitution of the United States in that the standards for setting such
5 damages are void for vagueness and there is no objective standard for limiting the
6 amount of punitive damages;

7 C. Such award for punitive damages would violate the equal protection
8 clauses of the Constitution of the United States in that it would encourage
9 disproportionate punishment without a rational basis and amount to an arbitrary
10 classification;

11 D. Waughan would be deprived in other ways of the right to due process;
12 or

13 E. Such award was excessive in nature or amount.

14 As a result, any award of punitive herein should be reduced as excessive or
15 not allowed.

16 AFFIRMATIVE DEFENSE NO. 15

17 (Frivolous Complaint)

18 Plaintiff's Complaint and its causes of action against Waughan, considered
19 separately or as a whole, are frivolous, unreasonable, or without foundation.
20 Therefore, attorneys' fees should be awarded to Waughan.

21 AFFIRMATIVE DEFENSE NO. 16

22 (Immunity)

23 There is no liability under state law for injury or damages to Plaintiff, if any
24 occurred, caused by the instituting or prosecuting of any judicial or administrative
25 proceeding. (Cal. Gov. Code, §§ 820.2, 821.6.)

26 AFFIRMATIVE DEFENSE NO. 17

27 (Immunity)

28 Individuals authorized to detain a person for 72-hour treatment and

1 evaluation pursuant to California Welfare and Institutions Code section 5150 shall
2 not be held civilly liable for exercising this authority in accordance with the law.
3 There is no liability under state law for injury or damages to Plaintiff, if any
4 occurred, caused by the instituting or prosecuting of any judicial or administrative
5 proceeding. (Cal. Welf. & Inst. Code, § 5278.)

6 AFFIRMATIVE DEFENSE NO. 18

7 (Immunity)

8 There is no liability or any injury or damages, if there were any, resulting
9 from making or failing to make any, or an adequate, physical or mental examination
10 or for diagnosing or failing to diagnose or for prescribing for any mental illness.
11 (Cal. Gov. Code, §§ 855.6, 855.8.)

12 AFFIRMATIVE DEFENSE NO. 19

13 (Immunity)

14 There is no liability or any injury or damages, if there were any, resulting
15 from a determination to confine or to place terms and conditions on confinement for
16 mental illness. (Cal. Gov. Code, § 856.)

17 AFFIRMATIVE DEFENSE NO. 20

18 (Truth)

19 The statements allegedly made by Waughan in Plaintiff's Complaint were
20 not false. To the contrary, they were substantially truthful, if they were made at all,
21 and any statements which were not substantially truthful were made by others.

22 AFFIRMATIVE DEFENSE NO. 21

23 (Special Damages)

24 To the extent that Plaintiff seeks special damages in his Complaint,
25 particularly due to his failure to allege facts sufficient to allege defamation per se,
26 he has failed to allege special damages with sufficient specificity, and lacks
27 sufficient basis for their recovery. (Cal. Civ. Code, § 45a.)

AFFIRMATIVE DEFENSE NO. 22

(Lack of Knowledge)

Waughan did not know, and in the exercise of reasonable care could not have known, of the purported falsity of the statements or representations alleged in Plaintiff's Complaint.

AFFIRMATIVE DEFENSE NO. 23

(Privilege)

The statements alleged in Plaintiff's Complaint are privileged because they were made, to the extent that they were made at all, in the proper discharge of an official duty, or in the initiation or course of a proceeding authorized by law. (Cal. Civ. Code, § 47.)

AFFIRMATIVE DEFENSE NO. 24

(Law Enforcement Proceeding Privilege)

The statements alleged in Plaintiff's Complaint are privileged because they were made, if they were made at all, in a judicial or other official proceeding authorized by law or in the initiation or course of a proceeding authorized by law, including, but not limited to, communication with law enforcement agencies for the purposes of a detention or arrest. (Cal. Civ. Code, § 47, subd. (b); *Hagberg v. California Federal Bank* (2004) 32 Cal. 4th 350.)

AFFIRMATIVE DEFENSE NO. 25

(Lack of Malice)

The defamatory statements alleged in Plaintiff's Complaint were made, to the extent that they were made, without malice to persons who were interested in the subject matter of the alleged communications. Waughan was also interested in the subject matter of the alleged communications as to afford a reasonable ground for supposing the motive for the communication to be innocent or was requested by a person interested to give the information. (Cal. Civ. Code, § 47, subd. (c).)

AFFIRMATIVE DEFENSE NO. 26

(Publication Privilege)

The statements alleged in Plaintiff's Complaint are privileged because they were made, to the extent that they were made at all, as a fair and true report in a public journal of a judicial or other official public proceeding of anything said in the course thereof, or of a verified charge or complaint to a public official upon which a warrant issued. (Cal. Civ. Code, § 47, subd. (d).)

AFFIRMATIVE DEFENSE NO. 27

(Lawful Detention)

To the extent that any person was restrained or restricted in any way in the incident alleged in the Complaint, such restraint and restriction was a lawful detention rather than an arrest.

AFFIRMATIVE DEFENSE NO. 28

(Immunity)

At the times and place alleged in the Complaint, Vaughan was a peace officer in the course and scope of employment. At all relevant times, Vaughan had reasonable cause to believe that Plaintiff had committed a public offense or a violation of state law in an officer's presence, and so believing, exercised the power, and discharged the duty, of lawful detention or arrest. Thus, he is immune from civil liability under state law. (Cal. Penal Code, §§ 836.5, 847.)

WHEREFORE, Vaughan prays that:

1. Judgment be rendered in favor of Vaughan and against Plaintiff;
 2. Plaintiff takes nothing by his Complaint;
 3. Vaughan be awarded attorneys' fees and costs of suit incurred herein;
- and
4. Vaughan be awarded such other and further relief as the Court may

1 deem necessary and proper.
2
3

4 **DEMAND FOR A JURY TRIAL**

5 Defendant Sergeant Vaughan demands, pursuant to Federal Rule of Civil
6 Procedure 38, that the above-entitled matter and all triable issues be tried by and
7 before a jury to the extent provided for and allowed by law.
8

9
10 Dated: September 20, 2016 Respectfully submitted,

11 KAMALA D. HARRIS
12 Attorney General of the State of California
13 ELIZABETH S. ANGRES
14 Supervising Deputy Attorney General

15 By: /s/ Gary Ostrick
16 GARY OSTRICK
17 Deputy Attorney General
18 Attorneys for Defendants Rachel LaSota, CHP
19 Officer Keene, CHP Officer Tolen, and CHP
20 Sergeant Vaughan
21
22
23
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27
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CERTIFICATE OF SERVICE

Case **Robert S. Markman v.** No. **2:15-cv-03335-DDP-KLS**
Name: **Rachel LaSota, et al.** _____

I hereby certify that on September 20, 2016, I electronically filed the following document with the Clerk of the Court by using the CM/ECF system:

**DEFENDANT SERGEANT WAUGHAN'S ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT; DEMAND FOR JURY TRIAL**

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I am employed in the Office of the Attorney General, and am a member of the California State Bar. I am 18 years of age or older and not a party to this matter.

I further certify that some of the participants in the case are not registered CM/ECF users. On September 20, 2016, I caused this document to be mailed by depositing a true copy thereof enclosed in a sealed envelope at a United States post office for collection, to the following non-CM/ECF participants:

Robert S. Markman
18554 Frankfort Street
Northridge, CA 91324

I declare under penalty of perjury under the laws of the United States the foregoing is true and correct and that this declaration was executed on September 20, 2016, at Los Angeles, California.

Gary Ostrick
Declarant

/s/ Gary Ostrick
Signature